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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.

EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Application No.	Applicant(s)
09/092,652	NISHIOKA ET AL
Examiner	**Art Unit**
Toan Ton	2871

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-48 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claims 1-48 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15)☐ Notice of References Cited (PTO-892)
16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
18)☐ Interview Summary (PTO-413) Paper No(s). _____
19)☐ Notice of Informal Patent Application (PTO-152)
20)☐ Other.

Election/Restriction

1 Restriction to one of the following inventions is required under 35 U.S.C. 121:

I Claims 1-40, drawn to an optical element and a method of manufacturing an optical element, classified in class 349, subclass 86, 187.

II Claims 41-48, drawn to a plate-like image pickup device, classified in class 349, subclass 1.

The inventions are distinct, each from the other because of the following reasons: Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed in Group II does not require the particulars of the subcombination as claimed in Group I because . The subcombination has separate utility such as it has its specific features that can be used in other devices.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper

2. If Group I is elected above, a further election to one of the following inventions is required under 35 U.S.C. 121:

(IA) Claims 1-26, drawn to an optical element , classified in class 349, subclass 86.

(IB) Claims 27-39, drawn to a method of making an optical element, classified in class 349, subclass 187

The inventions are distinct, each from the other because of the following reasons : Inventions IB and IA are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product as claimed in Group IA can be made by another and materially different process other than the claimed process in Group IB.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group IA is not required for Group IB, restriction for examination purposes as indicated is proper.

3. If Group IA is elected above, a further election to one of the following patentably distinct species of the claimed invention is required :

(IA1) the specifics of the device being comprised of an optical element using a polymer dispersive liquid crystal [claims 1-2, 4-6, their (1-2, 4-6) dependent claims, and 25-26];

(IA2) the specifics of the device being comprised of an optical element using a polymer dispersive liquid crystal [claim 3, its dependent claims].

4. If species (IA1) is elected above, a further election to the following patentably distinct species of the claimed invention is required :

(IA1a) the specifics of the device being comprised of an optical element satisfying $2 \leq D \leq \lambda/5$ [claims 17, 19]; ***or*** (IA1b) the specifics of the device being comprised of an optical element satisfying $2 \leq D \leq \lambda$ [claim 18]; ***or*** (IA1c) the specifics of the device being comprised of an optical element satisfying $7 \leq D \leq 500\lambda$ [claim 20];

and

(IA1d) the specifics of the device being comprised of a mirror comprising in order from a side of light incidence particular and detailed structural elements as recited in claim 25; ***or*** (IA1e) the specifics of the device being comprised of a mirror comprising in order from a side of light incidence particular and detailed structural elements as recited in claim 26.

** Other dependent claims (not listed) of claims 1-2, 4-6 will be examined along with one of species* (IA1a)-(IA1c), *and one of species* (IA1d)-(IA1e).

5. If species (IA2) is elected above, a further election to the following patentably distinct species of the claimed invention is required :

(IA2a) the specifics of the device being comprised of an optical element satisfying $2 \leq D \leq \lambda/5$ [claim 17]; ***or*** (IA2b) the specifics of the device being comprised of an optical element satisfying $7 \leq D \leq 500\lambda$ [claim 20].

** (Other dependent claims (not listed) of claim 3 will be examined along with one of species* (IA2a)-(IA1b).

6. If Group IB is elected above, a further election to one of the following patentably distinct species of the claimed invention is required :

(IB1) the specifics of the method being comprised of the particular and details steps as recited in claim 27;

(IB2) the specifics of the method being comprised of the particular and details steps as recited in claim 28;

(IB3) the specifics of the method being comprised of the particular and details steps as recited in claim 29;

(IB4) the specifics of the method being comprised of the particular and details steps as recited in claims 30-31;

(IB5) the specifics of the method being comprised of the particular and details steps as recited in claim 32;

(IB6) the specifics of the method being comprised of the particular and details steps as recited in claim 33,

(IB7) the specifics of the method being comprised of the particular and details steps as recited in claim 34;

(IB8) the specifics of the method being comprised of the particular and details steps as recited in claim 35;

(IB9) the specifics of the method being comprised of the particular and details steps as recited in claim 36;

(IB10) the specifics of the method being comprised of the particular and details steps as recited in claim 37;

(IB11) the specifics of the method being comprised of the particular and details steps as recited in claim 38;

** Claim 39 will be examined along with one of elected species* (IB1)-(IB11).

7. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there is no generic claim.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Remarks

8. This is a modified Election/Restriction Requirement. The Examiner regrets the delay in arriving at this second election/restriction requirement.

Contact Information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to T. TON whose telephone number is (703) 305-3489. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

May 21, 2001

Minh-Toan T. Ton
Patent Examiner
Technology Center 2800